



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1995

Mr. Mark E. Dempsey
Assistant City Attorney
City of Garland
P.O. Box 469002
Garland, Texas 75046-9002

OR95-1006

Dear Mr. Dempsey:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35102.

The City of Garland (the "city") received an open records request for, among other things, the photographs taken by the city police at the scene of a "car/pedestrian accident" in which a child was killed.¹ You inform us that an individual has recently been indicted in connection with the accident and that the prosecution of this case is currently pending. You seek to withhold the requested photographs at this time pursuant to the "law-enforcement" exception, section 552.108 of the Government Code.

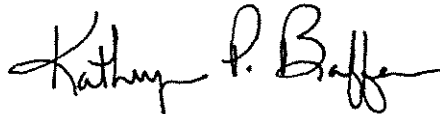
Prior decisions and opinions of this office have distinguished between "open" and "closed" investigative files. *See, e.g.,* Open Records Decision Nos. 339 (1982), 320 (1982), 252 (1980), 216 (1980); Attorney General Opinion MW-446 (1982). These opinions and decisions establish that the availability of the law-enforcement exception is greatly restricted when an investigative file has been closed, such as where a conviction has been obtained or a decision has been reached that no prosecution will be initiated. However, where an investigative file is open, as it is here, it should be readily apparent that the public disclosure of photographs of a crime scene could reduce the evidentiary value of the photographs when the case proceeds to trial. *See* Open Records Decision No. 378 (1983).

¹The requestor also seeks a "complete copy of the crime scene report" that was prepared in connection with the accident. Because you have not submitted this record to us and you make no argument as to why the requested report is excepted from public disclosure, we assume that the city has waived any argument for withholding this record and has made the report available to the requestor.

In Open Records Decision No. 287 (1981), this office held that information may be withheld under the law-enforcement exception when it is apparent from an examination of the information how and why its release would unduly interfere with law enforcement. In our opinion, it is apparent from an examination of these photographs how such undue interference would likely occur in this instance. We therefore conclude that the city may withhold the requested photographs at this time pursuant to section 552.108.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, reading "Kathryn P. Baffes". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kathryn P. Baffes
Assistant Attorney General
Open Records Division

KPB/RWP/rho

Ref.: ID# 35102

Enclosures: Submitted photographs

cc: Ms. Donna Malouf
The Law Offices of Stephen F. Malouf, P.C.
2651 N. Harwood, Suite 210
Dallas, Texas 75201
(w/o enclosures)